*S*S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the complaint of **JOHN A. HOLETON** against **DTE ENERGY COMPANY**.	))))	Case No. U-17986

At the November 7, 2016 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Norman J. Saari, Commissioner
Hon. Rachael A. Eubanks, Commissioner

OPINION AND ORDER

History of Proceedings

On November 16, 2015, John A. Holeton filed a complaint with the Commission against DTE Energy Company and its electric subsidiary, DTE Electric Company (collectively, DTE),[1] alleging violations of the Commission's Consumer Standards and Billing Practices for Electric and Gas Residential Customers, and that DTE's efforts to replace Mr. Holeton's analog meter with an Advanced Metering Infrastructure (AMI) meter in November 2015 were unlawful. On November 23, 2015, the Commission sent Mr. Holeton notice that his complaint did not meet the *prima facie* requirements to qualify as a formal complaint.

[1] Based on the subject matter of the complaint, the Commission observes that DTE Electric Company is the intended respondent.

On February 22, 2016, Mr. Holeton filed an application for leave to appeal the Commission's decision and a second complaint. The Commission determined that Mr. Holeton's second complaint met the *prima facie* requirements to qualify as a formal complaint, which rendered his application for leave to appeal moot.

Mr. Holeton's formal complaint invokes the Commission's jurisdiction under MCL 460.58, describes events alleged to have taken place at and near the Holeton home on November 20, 2015, and asserts violations of Mich Admin Code, R 460.101 *et seq*., specifically R 460.131 (Publication of procedures), R 460.137 (Shutoff permitted), R 460.139 (Form of notice), and R 460.115 (Customer meter reading). On May 10, 2016, DTE answered Mr. Holeton's complaint.

On June 16, 2016, the Commission Staff (Staff) filed a motion for summary judgment and on June 23, 2016, the respondent filed its response to the motion, indicating that the company concurred with the Staff. On June 24, 2016, the complainant filed his response and a motion to dismiss the Staff's motion. The motion for summary judgment was subsequently denied.

An evidentiary hearing was held on June 28, 2016, before Administrative Law Judge Sharon L. Feldman (ALJ). The complainant appeared in *pro per*. After discussion with the ALJ, Mr. Holeton assured her that he was prepared to go forward and did not require the services of an attorney. DTE and the Staff also participated in the proceedings. The record consists of 126 pages of transcript and 14 exhibits. The parties chose to deliver closing arguments at the hearing in lieu of closing briefs.

Proposal for Decision

On September 16, 2016, the ALJ issued a Proposal for Decision (PFD) containing an accounting of the facts and evidence of record, the details of which shall not be repeated in this order. The PFD concluded that: (1) DTE did not make an express commitment to refrain from

installing digital meters at the Holetons' residence; (2) DTE did not issue a shutoff notice to the Holetons; (3) DTE provided the Holetons with the opportunity to allow DTE access to replace their home's meter, and the Holetons have not been injured by the utility's initial conclusion that access was denied; (4) DTE's use of a large number of trucks and security guards while installing AMI meters in the Holetons' neighborhood did not intimidate the Holetons by causing them to take an action against their wishes; (5) DTE did not make a binding contractual commitment to refrain from installing digital meters at the Holetons' house; (6) the Commission's orders in Case No. U-17053[2] do not give customers an indefinite time period to retain an analog meter while they consider whether to join the approved opt-out program; (7) DTE did not violate the rules governing shutoff notices in its communications with the Holetons; and (8) DTE's use of a large number of trucks and security guards in the Holetons' neighborhood did not cause an actionable injury to the Holetons. The PFD concluded that the complaint should be dismissed. No exceptions were filed by any party.

Discussion

The PFD identified seven issues to be resolved by this contested proceeding. The first is whether Mr. Holeton has standing to file a complaint under MCL 460.58, which states in pertinent part: "Upon complaint in writing that any rate, classification, regulation or practice charged, made or observed by any public utility is unjust, inaccurate, or improper, to the prejudice of the complainant, the commission shall proceed to investigate the matter." DTE offered the argument that Mr. Holeton is not their customer of record because the bills are in Ms. Holeton's name;

[2] See the May 15, 2013 and July 29, 2013 orders in Case No. U-17053, and the unpublished decision issued on February 19, 2015 by the Michigan Court of Appeals, Docket Nos. 316728 and 316781.

however, DTE did not object to Mr. Holeton acting as representative to Ms. Holeton. Tr 31. Ms. Holeton testified that Mr. Holeton lives at the address in question and pays the utility bills there. Tr 36. Accordingly, the ALJ opined, there is no question that Mr. Holeton has standing under MCL 460.58 to file a complaint and to raise issues regarding the utility's compliance with the Commission's rules governing a shutoff of service to his residence. PFD, pp. 15-16.

The Commission agrees with the ALJ that Mr. Holeton has standing to raise the above issues in his formal complaint.

The second issue is whether DTE made a contractual long-term commitment to refrain from installing digital meters at the Holetons' home. At the hearing, Mr. Holeton referred to a 2011 complaint filed by Ms. Holeton regarding the digital meter installed at their home to facilitate DTE's interruptible air conditioning program. At that time, Ms. Holeton complained that she wished to have an analog meter. The Commission contacted DTE and was told that the company had replaced the digital meter with the old style meter. The Commission then wrote Ms. Holeton a letter summarizing the resolution of the complaint. Exhibit CJH-8. In his current complaint, Mr. Holeton asserted that the Commission letter constitutes evidence of an implied contract entered into between DTE and the Holetons, to the effect that DTE agreed it would not install digital meters at the Holetons' home. Tr 46; PFD, pp. 17-18. DTE argued that there is no contract, implied or otherwise. Tr 121-122.

The PFD stated that there appears to be no basis on the record to establish that DTE committed to permit the Holetons to retain an analog meter for an indefinite period of time. There is no stated termination date in the letter that the Commission wrote to the Holetons. Exhibit

CJH-8. Therefore, the ALJ opined, the agreement should be construed as terminable at will. [3] The ALJ reasoned that if DTE had agreed to refrain from replacing the Holetons' meters with digital meters, a writing signed by DTE would generally be required to enforce the agreement.[4] Additionally, as a regulated utility, DTE's ability to make a long-term commitment such as the Holetons are asserting is limited because such utilities must comply with the Commission's rules. At the hearing, DTE noted that there was no Commission-approved opt-out program at the time the company removed the digital meter. Tr 121-122; PFD, p. 18.

The Commission agrees with the ALJ and adopts her recommended finding that DTE did not enter into a contract with the Holetons to indefinitely refrain from installing digital meters at their home.

The third issue is whether orders in Case No. U-17053 provide for an indefinite time period for customers to consider whether to retain their analog meter or have it replaced with an AMI meter. Ms. Holeton testified that on page 3 of the September 29, 2013 order (September order) in the above case, it is noted by the Staff that the Commission did not provide for a cutoff date when the customer would be required to make a decision. Tr 54-63; Exhibit CJH-10.

The ALJ was not persuaded and stated that in the September order, the Commission did not alter its May 15, 2013 order (May order) in the case, but merely cautioned DTE to make clear that a customer may opt-out at any time, even after an AMI meter had been installed. Thus, neither order provides that a customer has an indefinite period of time in which to delay installation of an AMI meter while the customer considers the decision to opt-out. The ALJ noted that the

[3] See *e.g. Lichnovsky v Ziebart International Corporation*, 414 Mich 228, 240-241; 324 NW2d 732 (1982).

[4] See MCL 466.132(1), and *Schipani v Ford Motor Company*, 102 Mich App 606; 302 NW2d 307 (1981).

Commission orders were upheld by the Michigan Court of Appeals. PFD, p. 19. See footnote 2, above.

The Commission agrees with the ALJ's analysis and confirms that neither its May order nor its September order should be construed to provide that a utility company must indefinitely delay installation of an AMI meter prior to a customer indicating that he or she desires to opt-out. Utilities have the right to install an AMI meter and may do so, unless the customer has properly complied with the utility's opt-out program.

The fourth issue is whether the letter (Exhibit CJH-11/R-5) that DTE sent the Holetons on February 5, 2016 (February 5 letter) is a shutoff notice, and if so, whether DTE violated Mich Admin Code, R 460.139 (the rule governing shutoff notices) by sending a shutoff that does not conform to the required information. The PFD quoted the letter in its entirety. PFD, p. 20. In pertinent part, the letter states that "[i]t is imperative that we gain access to our metering equipment and we need your cooperation. Please contact us at 1.800.477.474 no later than **30 days from the date of the letter** [emphasis added in the original letter] to arrange access to our metering equipment." The letter notes that DTE has the right to shut off or terminate service if the customer has refused to arrange access at reasonable times. The Holetons consider this to be a shutoff notice; DTE does not. Tr 53-54, 96. DTE offered an example of an actual shutoff letter to a customer who was found to have a locking device on his meter (Exhibit R-8) to be compared to the February 5 letter. The shutoff letter states the reason for the shutoff and contains the sentence: ". . . your electric service will be disconnected without further notice if you do not remove the locking device and contact us immediately so that we can proceed with the installation of the advanced meter."

The ALJ indicated in her PFD that she had carefully analyzed the language of the February 5 letter and found no direct statements to indicate that DTE intended to shutoff service to the Holetons if they did not respond in the 30-day time period. In contrast, the ALJ found that the shutoff notice provided as an example by DTE clearly states that service will be shut off without further notice. Therefore, the February 5 letter is not a shutoff notice, and thus cannot be in violation of R 460.139.

The Commission agrees with the ALJ that the February 5 letter informing the Holetons that DTE needed access and to call the company within 30 days to make arrangements is not a shutoff notice. While the letter indicates that DTE has the right to discontinue service under specific circumstances, it does not state the company intends to do so. Accordingly, the letter is not governed by R 460.139 and, as such, cannot be in violation of the rule.

Fifth, the Holetons objected to the statement in the February 5 letter and in DTE's records that the Holetons refused to allow DTE access to the meter. Ms. Holeton testified that they did not refuse DTE access and did not refuse to allow installation of a replacement meter. Tr 47-48. However, the Holetons made clear that they objected to DTE "trespassing" on their property on November 20, 2015 (Tr 58) and, according to Mr. Holeton's complaint, made clear to DTE that they would not be permitted to install an AMI meter on the Holeton property. PFD, pp. 22-23. The ALJ opined that resolution of the underlying claims by the Holetons that they are not required to allow DTE to install an AMI meter nor do they have any deadline by which to opt-out, renders this issue moot. PFD, p. 24.

The Commission agrees with the ALJ's analysis and opinion regarding this issue. Accordingly, the Commission adopts the PFD's recommended decision relating to allegations that the Holetons refused DTE access to their meter.

The sixth issue is whether DTE is permitted to shut off service due to locks being placed on its meters. It is noted that the February 5 letter is not a shutoff notice, nor does the record contain allegations that the complainant has been or is to be shut off because he has placed locks on his meters. However, DTE considers it a safety hazard when customers place locks on their meters. Tr 107. See Exhibit R-7, which includes a photo of the Holetons' padlocked meters. The ALJ opined that, even though the locks can be removed with bolt cutters, in a true emergency, any additional steps to address the emergency may properly be characterized as a safety issue. PFD, p. 24-25. The ALJ indicated that whether the locks constitute a safety hazard to the extent to trigger the no-notice provision under R 460.136[5] was not addressed in this proceeding. PFD, p. 25.

The Commission agrees with the ALJ that locks placed on meters by customers constitute a safety issue. The meters, though attached to a residence, are the property of the utility company. The utility company is legally responsible for maintenance and service of the meter so that safe and reliable service can be provided to customers.[6] It is essential that the company be able to access its meters without inhibition by locks, cages, or other locking devices. As such, the Commission agrees with the ALJ and DTE that locked meters constitute a safety violation within the meaning of R 460.137(g). [7]

---

[5] R 460.136 states: "Notwithstanding any other provision of these rules, a utility may shut off service temporarily for reasons of health or safety or in a state or national emergency. When a utility shuts off service for reasons of health or safety, the utility shall leave a notice at the premises in accordance with the provisions of R 460.139(a), (b), and (i)."

[6] Technical Standards for Electric Service, R 460.3605(1) states: "All electrical quantities that are to be metered as provided in R 460.3301 shall be metered by commercially acceptable instruments which are owned and maintained by the utility."

[7] Mich Admin Code, R 460.137(g) states a reason for shutoff: "The customer has violated any rules of the utility approved by the commission so as to adversely affect the safety of the customer or other persons or the integrity of the utility system."

The final issue to be addressed is whether DTE personnel and equipment in and around the Holetons' home constituted "intimidation" by the company. DTE witness, Mr. Sitkauskas, testified that many trucks are sent to facilitate a neighborhood installation, with the goal of 40- to 50 meter changes per day. He also confirmed that security guards are sometimes sent on routes. Tr 94-95, 98. The witness' testimony that DTE employees are required to carry identification was not contradicted. PFD, p. 26. The ALJ noted that the record confirms that neither Mr. nor Ms. Holeton were intimidated into taking any actions against their wishes. *Id.* Accordingly, the ALJ opined that no Commission action is warranted at this time.

The Commission agrees with and adopts the ALJ's recommended decision regarding allegations of DTE intimidation of the Holetons and lack of employee identification.

After consideration of the record, the thorough analysis of the facts and evidence contained in the PFD, and the lack of exceptions to the PFD filed by any party, the Commission agrees with and adopts all recommended findings and conclusions of the ALJ. Accordingly, the complaint is dismissed.

THEREFORE, IT IS ORDERED that the complaint filed by John A. Holeton is dismissed.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the Michigan Court of Appeals within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

_____

Sally A. Talberg, Chairman

_____

Norman J. Saari, Commissioner

_____

Rachael A. Eubanks, Commissioner

By its action of November 7, 2016.

_____

Kavita Kale, Executive Secretary